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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

7 WASHINGTON POTATO
8 COMPANY,

9 Plaintiff,

10 v.

11 J.R. SIMPLOT COMPANY,

12 Defendant.

NO: 4:17-CV-5032-RMP

ORDER DENYING DEFENDANT’S
MOTION FOR A PRELIMINARY
INJUNCTION

13 BEFORE THE COURT is a motion by Defendant J.R. Simplot Company
14 (“Simplot”) for a preliminary injunction, ECF No. 21. The Court reviewed the
15 parties’ briefing and attachments, heard oral argument from the parties on July 27,
16 2017, and considered the relevant law. Finding that the standard for entry of a
17 preliminary injunction has not been met, the Court denies Defendant’s motion for
18 the reasons set forth below.

19 **BACKGROUND**

20 Essentially, this matter concerns a multifaceted contract dispute between
21 Plaintiff Washington Potato Company (“WPC”) and Defendant and Counter-

ORDER DENYING DEFENDANT’S MOTION FOR A PRELIMINARY
INJUNCTION ~ 1

1 Claimant Simplot regarding a vegetable processing facility that the parties have co-
2 owned since 2008 as fifty percent members, Pasco Processing LLC (“Pasco
3 Processing”). In addition to co-owning Pasco Processing with WPC, Simplot is a
4 customer of the facility. WPC manages and operates Pasco Processing, including
5 scheduling usage of the plant’s services.

6 Simplot also states counterclaims against the Oregon Potato Company
7 (“OPC”), with which Simplot owns another multimillion dollar food processing
8 and food distribution business, Gem State Processing LLC. Both OPC and WPC
9 are controlled by Frank Tiegs.

10 On February 15, 2013, the parties entered into an “Amended and Restated
11 Operating Agreement” for Pasco Processing (“Pasco OA”). ECF No. 26-1 at 2.
12 Both parties seek declaratory judgments validating their divergent interpretations
13 of the Pasco OA. ECF Nos. 1 at 15-16; 35 at 39-40. For its part, WPC seeks the
14 Court’s endorsement of WPC’s purchase of Simplot’s interest in Pasco Processing
15 which made it become the one hundred percent owner of the business. ECF No. 1
16 at 4, 16. In addition, Plaintiff seeks damages from a breach of contract claim.
17 ECF No. 1 at 16-17.

18 Defendant Simplot is seeking to preserve its status as fifty percent owner
19 and revert to the general state of affairs between the parties before WPC allegedly
20 exercised its option to buy out Simplot’s share of the business. Defendant also
21 raises the following additional counter claims against WPC and OPC: breach of

1 contract; violations of the Washington Limited Liability Company Act's records
2 disclosure requirements, under Rev. Code Wash. § 25.15.136; and injunctive relief
3 under the Washington Limited Liability Company Act, Rev. Code Wash. §
4 25.15.136. ECF No. 35 at 34-39.

5 STANDARD

6 A preliminary injunction is an “extraordinary and drastic remedy” that may be
7 granted only upon a “clear showing” that the movant is entitled to such relief.
8 *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997). To succeed in securing a
9 preliminary injunction, the moving party must demonstrate “that he is likely to
10 succeed on the merits, that he is likely to suffer irreparable harm in the absence of
11 preliminary relief, that the balance of equities tips in his favor, and that an injunction
12 is in the public interest.” *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20
13 (2008).

14 Provided the Court considers all four parts of the *Winter* test, the Court may
15 supplement its preliminary injunction inquiry by considering whether “the likelihood
16 of success is such that ‘serious questions going to the merits were raised and the
17 balance of hardships tips sharply in [the requesting party’s] favor.’” *Alliance for the*
18 *Wild Rockies v. Cottrell*, 632 F.3d 1127, 1132 (9th Cir. 2011) (quoting *Clear*
19 *Channel Outdoor, Inc. v. City of L.A.*, 340 F.3d 810, 813 (9th Cir. 2003)).

20 Otherwise stated, the Ninth Circuit’s “serious questions” consideration survives
21 *Winter*, “so long as the [movant] also shows that there is a likelihood of irreparable

1 injury and that the injunction is in the public interest.” *Alliance for the Wild*
2 *Rockies*, 632 F.3d at 1135. Finally, as with any equitable relief, a preliminary
3 injunction generally is not appropriate where adequate legal remedies are available.
4 *See Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982) (“The Court has
5 repeatedly held that the basis for injunctive relief in the federal courts has always
6 been irreparable injury and the inadequacy of legal remedies.”).

7 **DISCUSSION**

8 Simplot is seeking a preliminary injunction to preserve its fifty percent
9 ownership in Pasco Processing pending resolution of the merits of this case. WPC
10 claims that in early 2017 it bought Simplot’s stake in the company pursuant to a
11 “Members [sic] Option to Purchase on Deadlock” in the Pasco OA.. *See* ECF No.
12 1-1 at 22 (Pasco OA). Simplot contends that a deadlock never occurred.

13 *Likelihood of Success on the Merits*

14 Simplot emphasizes that the plain language of the Pasco OA demonstrates
15 Simplot’s probable success on the merits. Both parties point the Court toward
16 “dispositive” provisions of the contract. When called upon to resolve the meaning
17 of words contained in a contract, courts consider each provision in the context of
18 the entire contract and seek to “interpret the contract in a manner that makes the
19 contract internally consistent.” *Brobeck, Phleger & Harrison v. Telex Corp.*, 602
20 F.2d 866, 872 (9th Cir. 1979). However, at this stage, each party has offered
21 competing and contradictory interpretations of the contract, each of which appears

1 meritorious. Therefore, for purposes of a preliminary injunction, Simplot has not
2 demonstrated a strong likelihood of resolution of the merits in its favor.

3 *Likelihood of Irreparable Harm*

4 Defendant must “*demonstrate*,” rather than merely allege, the existence of
5 an immediate threatened injury to support preliminary injunctive relief. *See*
6 *Caribbean Marine Servs. Co. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988)
7 (emphasis in original). “Speculative injury cannot be the basis for a finding of
8 irreparable harm.” *In re Excel Innovations, Inc.*, 502 F.3d 1086, 1098 (9th Cir.
9 2007). Moreover, mere financial injury “will not constitute irreparable harm if
10 adequate compensatory relief will be available in the course of litigation.”
11 *Goldie's Bookstore, Inc. v. Superior Court*, 739 F.2d 466, 471 (9th Cir. 1984)
12 (concluding that plaintiff's harm would be easily calculable in damages); *see*
13 *Sampson v. Murray*, 415 U.S. 61, 90 (1974) (“The possibility that adequate
14 compensatory or other corrective relief will be available at a later date, in the
15 ordinary course of litigation, weighs heavily against a claim of irreparable harm.”).

16 Defendant indicates that it has suffered injuries that are difficult to reduce to
17 a monetary value by being deprived of its role as a co-owner of Pasco Processing.
18 Defendant also alleges a number of injuries that are threatened by action that
19 Plaintiff *may* take regarding decreasing or ceasing Pasco Processing's production
20 for Defendant, but fails to provide evidence of actual harm, including a decrease in
21 having its products processed. Defendant's submissions for purposes of its

1 preliminary injunction motion arguably demonstrate that Defendant has suffered
2 some harm during the unraveling of its co-ownership relationship with Plaintiff.
3 However, Defendant fails to provide sufficient evidence to support irreparable
4 harm. Rather, the irreparable harm that Defendant alleges is speculative and
5 generally of a nature that can be reduced to monetary damages should Defendant
6 prevail on the merits.

7 *Balance of Equities and the Public Interest*

8 While Defendant asserts that the “balance of equities and public interest
9 strongly favor resolving this dispute over the ownership of a multimillion dollar
10 business with thousands of employees in an orderly fashion in this Court rather
11 than through unilateral action by WPC,” ECF No. 21 at 10, the Court finds no
12 evidence at this point in the litigation that supports how a preliminary injunction
13 would serve the public interest or how the equities tip sharply toward Defendant.

14 **CONCLUSION**

15 In sum, Defendant has not made a clear showing that it has suffered
16 irreparable harm to date or that it is likely to experience irreparable injury in the
17 absence of a preliminary injunction. Both parties raised “serious questions” going
18 to the merits, and Defendant did not show that the balance of hardships tips sharply
19 in its favor. Moreover, the “serious questions going to the merits” and the balance
20 of hardships may be weighed particularly heavily in favor of the movant only
21 where the movant already has shown “that there is a likelihood of irreparable

1 injury and that the injunction is in the public interest. *Alliance for the Wild*
2 *Rockies*, 632 F.3d at 1135. Here, Defendant showed neither a likelihood of
3 irreparable injury nor the benefit to the public interest.

4 Therefore, **IT IS SO ORDERED** that Defendant's Motion for a Preliminary
5 Injunction, **ECF No. 21**, is **DENIED**.

6 The District Court Clerk is directed to enter this Order and provide copies to
7 counsel.

8 **DATED** August 1, 2017.

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10 *s/ Rosanna Malouf Peterson*
ROSANNA MALOUF PETERSON
11 United States District Judge
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